In the Supreme Court Of The United States

OCTOBER TERM

NO. 78-779

MITCHELL EDELSON, JR.
Petitioner,
VS.
UNITED STATES OF AMERICA
Respondent,

Brief of Clarence Edelson Supporting Petitioner, Amicus Curiae

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Clarence Edelson
P. O. Box 1105
835 Heffernan Avenue
Calexico, California 92231
Attorney For Amicus Curiae

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AMICUS CURIAE

Clarence Edelson, amicus curiae by consent as shown, further respectfully shows as follows:

OPINIONS BELOW

In Related or Collateral Cases and In This Matter.

Case No. 50593, on docket of Supreme Court of Illinois, orally argued November 15, 1978, not yet decided, captioned "In the Matter of Morton Efraim Friedman".

Case No. 77-1352, on docket of United States Court of Appeals for the seventh circuit, decided August 15, 1978, captioned United States of America vs. Geoffrey Disston, not yet reported other than in slip opinion. Set out in Appendix C, commencing at app. page 9, of Petition for Writ.

This case below, reported 581 F.2d 1290, is set out in Appendix A, commencing at app. pages 1 through 7, of same Petition for Writ.

U.S. v. French aff. (unpub. ord. Rule 35) - F.2d (C.A. 7th - 1977)

INTEREST OF AMICUS CURIAE

Clarence Edelson was the brother of Mitchell Edelson, Senior, a lawyer until his death a few weeks before

the indictment of Mitchell Edelson, Junior, his son, in this case, in October, 1975. As amicus curiae Clarence Edelson shares family concern, and having been himself a member of the Bar of this Court since 1939, shares the tradition of fraternity among practitioners of the profession handed down the paternal line from Joseph H. Edelson, also a lawyer until his death long ago, he having been grandfather of Mitchell, Junior, the Petitioner.

QUESTIONS PRESENTED

1. The First Question. When the whole substance of supposed false declarations (18 U.S.C.#1623) consists merely of denying, before a grand jury, having previously spoken certain words, and when, as it happens those much earlier words point at some vague guilt but, by way of defense they either are or may be shown to be properly harmonized with innocent denial if fully explored and explained as to context, - then in such a case is it not "constitutional error of the first magnitude" for the trial court to choke off or curtail development of the heart of the defense, and in effect

prohibit meaningful cross-examination of principal witnesses as to vital, disputed elements of crime making up the prosecution's case in chief? And equally for the Court of Appeals to ignore the point entirely?

In other words, stated affirmatively, "...misapprehension of the law has led both courts below to adjudicate rights without considering essential facts in the light of the controlling law..." [Quoted from Maggio v. Zeitz, 333 U.S. 56, 67], - federal law - "in conflict with applicable decisions of this court; ...[departing] from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision. [Rule 19(b)]".

2. The Second Question. Laying aside or waiving some conceivable relief such as the right of dismissal of this prosecution without retrial, but confining relief here requested simply to retrial, should not the trial court be directed, on remand, to permit full cross-examination and sifting of the "overinvolvement" of the federal prosecutors in

this case so as to disgorge or reveal exactly how far their overinvolvement may have gone, possibly having affected, even tainted their presentation to the grand jury, i.e., so that mayhap some supposed false declaration of Petitioner, as charged, could, instead, possibly not have been such at all, or tended at all to be the basis for misleading or hindering grand jury investigation, and hence, conceivably, was not at all material to grand jury deliberations but was, on the contrary, in fact just utter trumpery and part of the whole "overinvolvement" which the whole grand jury minutes might well expose as just trumpery and no more, if revealed?

The writ as here prayed for, limited or confined strictly, will furnish adequate relief.

In this perspective the challenge of the amicus curiae to the fairness and propriety of the conviction, on Sixth Amendment grounds, is not as wide-ranging on points of law as the challenge made in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

FACTS

ALL VIRTUALLY UNDISPUTED

Year or Date	Record (if not undisputed)
1973 October	
Edelson chairs "blue ribbon" bar committee investigating Chicago area prosecutors, state and federal.	
1973 Study of prosecutorial "over-involvement"	

In October of, 1973, a Chicago lawyer, Mitchell Edelson, Jr., was designated chairman of a "blue ribbon" sub-committee on criminal law. This had been formed to investigate reported misconduct in the offices of Chicago area prosecutors both state and federal. This had to do mainly with possible instances of prosecutorial "over-involvement", "bugging" offices of officials, judges etc., with devices placed on the body of cooperating accused criminals just before

Year or Date	Record (if not undisputed)
Still 1973	
Introducing Morton Friedman, who took companion case v. Camp, Disston	
Morton Friedman one of those investigated by Edelson's "Blue-ribbon" committee. Same Fried-	

they engage in "plea-bargaining". A statute of Illinois, not here challenged, conferred some color of right. A prosecutor at the time, namely Morton Friedman, first seen as an assistant Cook County, Illinois States Attorney, Chief of Criminal Division, but very soon afterwards, at about this time an Assistant United States Attorney, quickly became a subject of the attention of the "blue-ribbon" Bar sub-committee. This was while Mitchell, Jr., was its chairman. Friedman's name appears subsequently in this re-

Year or Date	Record (if not undisputed)	
man later active in this and companion case beginning 1973, 1974 through appeal stage.		record, and more prominently in companion federal cases, one a lengthy jury trial against Geoffrey Disston, co-defendant, during July of 1974, with a major figure, Roger Camp. Disston and Camp had been indicted in Case 73CR 881 in 1973. Friedman handled case in 1974, at trial, for United States. At the conclusion in October, 1975, of the first Disston appeal Mitchell, Jr., formerly Roger Camp's attorney during preparation for and during Camp's joint trial with Disston, was indicted on October 22, 1975 for
1973 Companion case, Disston, Camp indicted December 1973		
1974 (jury) Both convicted for mail frauds		
October 22, 1975 Edelson indicted this case. Disston's first appeal fails (October) 1975	Edelson indictment in App.D, App.P. 17, of Pet. for Cert.	

Year or Date	Record (if not undisputed)	
Back to May 5, 1975 Edelson testimony at Grand Jury		false declarations before the grand jury. Mitchell, Jr., had testified before the grand jury on May 5, 1975, Roger Camp was indicted in Chicago, U.S. Dist. Ct. case No. 73 Cr.881, with named co-defendants including Geoffrey Disston. After Camp's arrest, and while in custody of federal officials, Camp offers his services as an informer, suggests his value would be greater to the United States out on bail, or if he is permitted to get to any one of several Chicago lawyers, naming Mitchell Edelson among the lawyers.
Back to 1973-4 Camp, in custody, offers to inform and released on bail		
(December) 1973 or 1974		
January-February Camp Retains Edelson		

Year or Date	Record (if not undisputed)
	Camp is released from custody on bail without yet having contacted Mitchell Edelson nor any other lawyer, so far as is known, excepting the federal officials while in custody.
1974 February	Camp next retains Mitchell Edelson, Jr., as his trial attorney in the upcoming Case # 73 Cr. 881, in which Geoffrey Disston is a co-defendant. Camp does not reveal that he is an informer, not to Disston nor even to his new lawyer, Mitchell, Jr. Mitchell, Jr., certainly does not know that Camp is a federal informer us-
1974 -July- Camp does not tell Edelson his true status as informer. Stands trial with Disston.	

Year or Date	Record (if not undisputed)
	ing him, supposedly as a lawyer, but actually so only after having discussed Mitchell, Jr.'s selection as his attorney with the federal lawyers prosecuting Camp. Mitchell, Jr., is duped.
Back to February -1974- Camp's plan to tape his lawyer, Edelson	Camp enlists other cronies or associates, some under charges, on probation, under suspicion, etc. to assist in projected tape recording of telephone conversations between Camp and Edelson, now Camp's lawyer. Camp makes numerous telephone calls to Edelson of which some seven taped long-distance calls, maybe
1974 The taping not monitored by Government. But government furnishes equip-	

Year or Date	Record (if not undisputed)	
ment to relay supposed copies for government. Long distance re-recording 1974		more, but at least seven, are taped, by Camp and cronies using borrowed Government equipment. None of the calls are or claimed, until now, known to have ever been monitored by Government or anybody excepting Camp's cronies during the conversations. Mitchell Edelson knows nothing of the taping. The Government formally disclaims all knowledge of any such taping, but in 1978 the United States Court of Appeals on Disston's second appeal has opined otherwise. Disston's "vindication". Camp commences to phone in to Govern-
August 15, 1978 Government's disclaimer of knowledge challenged by Court of Appeals reversal in second Disston appeal		

Year or Date	Record (if not undisputed)	
1978 Disston wins second appeal August 15, 1978	[Opin., Aug.15, 1978, CA 7th in U.S. v. Disston] REVERSING DEN. OF MOTION for evidentiary hearing under Fed. R. Crim P. 33, newly disc. evidence, and for habeas corpus under 28USC 2255	ment agents and lawyers sections or units of his tape-recorded calls with his lawyer, Mitchell, Jr. These are re-recorded, after being phoned in long distance periodically, as copies, supposedly, but nowhere shown to be true copies of the original versions of Camp's taping of calls with Edelson. Indeed, some original versions were lost or otherwise disappeared, and became unavailable at all at the trial of Mitchell, Jr. in 1977. His trial in 1977 pivoted around contrasts between Edelson's grand-jury testimony in May, 1975, about
Back to 1974 Some original tapes unavailable at Mitchell's trial		

Year or Date	Record (if not undisputed)
1975 (May) Edelson at Grand Jury not told about taping. Quaere: Was Grand Jury? Henderson's cross-examination	his taped conversations with Camp. NOTHING IN THIS RECORD SHOWS WHAT GRAND JURY HEARD, EXCEPTING BY WITNESS JAMES HENDERSON, MITCHELL'S ORIGINAL PROSECUTOR AT GRAND JURY WHOSE CROSS EXAMINATION DURING TRIAL WAS SHUT OFF, as to the recorded copies of the tapes made from Camp's relayed telephone playing of them to the Government officers, i.e. the point of their authentication may or may not have been preserved, but was raised. Mitchell, Jr. actually himself objected, on the grounds of their being unauthenticated,
1977 Question of Last Quaere not really answered at Edelson's trial in 1977 because Henderson not cross-examined	
1977 Camp's tapes of Edelson authenticated? Objection at trial	

Year or Date	Record (if not undisputed)
Back to 1974, March 25 taping by Camp of his lawyer, Edelson, commences	etc., standing alongside his trial counsel. The first of Camp's calls to Edelson which he taped during a so-called Watts or "800" toll-call from Fort Lauderdale to Chicago, was a call made from offices of a company in Fort Lauderdale which Camp's associates one Reifler and one Rahuba supposedly could move around in freely, or use (possibly for some mail fraud or other fraud.) Reifler plays the tapes to Hurley, a federal officer, later by phone. Reifler, like
Still back in 1974 Relaying to Government by Camp or his informer cronies through	

Year or Date	Record (if not undisputed)	
long distance of some version or another of tapes		Camp's other cronies, is also a federal informer in whom Camp may have confided, or maybe not. Camp and Reifler or one of them had government equipment, a Sony for transmitting or recording. Somebody named "Bill" probably Bill Rehuba is mentioned by Reifler, during testimony against Mitchell, Jr., as having decided, along with Camp and Reifler also so deciding together, that their procedure would be just to do it, on their own, for themselves, and for such value or use as might come of such efforts whenever, if ever,
1974 Relaying or re-recording uses borrowed Government equipment.		
1977 A name at trial of Mitchell, Jr.		

Year or Date	Record (if not undisputed)	
Back to 1974		they could, or the Government might possibly find some value or need for such material, all long range sort of speculation in that material as a future commodity available for Camp. Reifler, Rehuba, or other such cronies if they should happen to be able to capitalize upon it somehow.
What Camp and cronies hoped would be worthwhile result of taping.		
1974		
1977	~~See Appendix, index to this brief~~.	In unpublished U.S. v. French, among related opinions below, Camp admitted perjury. (Government will not likely deny Camp's admission).
Still back in 1977	See Argument	Camp's cross-examination in Edelson case was curtailed preventing development of essence of defense; er-

Year or Date	Record (if not undisputed)	
		ror crossed count lines, similarly.
Pending 1978	~~See Appendix~~, Index to this brief	Morton Efraim Friedman's disciplinary problems have been argued orally in Illinois Supreme Court, (Case #50593), and await decision.
October 1973	~~See Appendix, Index to this brief~~.	Mitchell Edelson's "blue-ribbon" Bar activities, thwarted by this conviction. Composition of Edelson's "blue-ribbon" committee of Bar.

SOME TECHNICAL FACTS

(also not in dispute)

The foregoing facts, set out in columnar form, furnish a synopis of the main narrative. They may be read vertically straight down the extreme left column.

There are some other more tech-

nical facts. There were the usual motions before trial i.e., to sever, to inspect and copy, to suppress, to dismiss, etc. These are set out in detail in the Petition for Writ of Certiorari.

The amicus curiae does not urge consideration here of any error in the denial of pre-trial motions. Motions at the trial stage renewing earlier motions for production of materials to enable the carrying on of better cross-examination, are within the scope of the two Questions Presented by the Amicus Curiae here.

The statement of the case now closes with vital reference to the indictment and judgment.

The indictment in four counts, is set out in Appendix D, commencing at app. pages 17 and on, of Petition for Writ.

The judgment was without a jury and acquitted Mitchell, Jr. on two counts and deemed him guilty on two others.

The judgment was that the sentences on each of the counts run concur-

rently, - one year in custody.

(Argument will refer to the inapplicability in this case of the rule that an error on only one of two counts, where the sentences on the counts run concurrently, is sometimes harmless error).

Next commences argument.

The writ, strictly limited to the two overlapping cognate questions asked here, is the extent of relief required. Even one of the two would allow crisp presentation on the genuine and important cognate contentions, which embrace one indexed, authoritatively, as "Constitutional error of the first magnitude" [Quoted from Davis v. Alaska, 415 U.S. 308, 318], and another, called "overinvolvement", as to which this Court seems almost to have invited submission ["Nor have we had occasion yet..." quoted from Hampton v. United States, 425 U.S. 484, 493].

ARGUMENT

Proper development of the issues in this case unhappily recounting how petitioner, Mitchell Edelson, Jr., flinched at a moment of truth really ought not require showing now how one, perhaps two of the federal prosecutors aligned against Mitchell, Jr., surely became "overinvolved."

The phrase, "overinvolved", fixes perspective, for argument, quickly.

Why?

Because this case rightly, on its undisputed facts, warrants consideration and could doubtless be so shown by confining its scope to a single point, - "overinvolvement", using that phrase, "overinvolvement", as written by Mr. Justice Powell:

> "Nor have we had occasion yet to confront Government overinvolvement in areas outside the realm of contraband offenses. Cf. United States v. Archer, 486 F. 2d 670 (CA.2, 1973)" [Quoted from Hampton

v. United States, 425 U.S. 484, 493,]

For easier clarity, avoiding ellipsis, the amicus curiae has relegated Mr. Justice Powell's key idea, just quoted, and treats it as his second or chief cognate proposition rather than as his key proposition.

The key proposition is taken up first. The overinvolvement is put into the setting as background. First, the key point a little awkwardly, and imprecisely:

THE GENERAL IDEA OF THE KEY QUESTION

In the setting of a case, this case, where the charges against a lawyer accuse him of false declarations before a federal grand jury (18 U.S.C. #1623) and the substance of his frank defense is,

"Yes, I said that to the grand jury. But what they indicted me for, it was not false."

"Goodness, the way my judges so far make it all out as false, by contrasting what I said to the grand jury with what I'm supposed to have meant or said,

according to the way they see it all or hear it from some sort-of spurious copies of tape recordings of my telephone talks with double agent informer, Roger Camp."

"I thought Camp was my client, and I sat with him in a jury trial at the table for weeks, and he never let on, and the prosecutor at the table, Mr. Henderson, and the other prosecutor, Mort Friedman, he never let on, and the judge all the while of course never knew, and the jury neither, I mean neither did double agent Camp's co-defendant, Geoffrey Disston, he didn't know, but Disston's on the way, finally they see about Disston, -

"Why wouldn't they even let my lawyer cross-examine double agent Camp, or effectively cross-examine him or the prosecutor, Mr. Henderson who handled the grand jury business. Mr. Henderson sat right at the table in my trial, and sat in the witness chair, how come, and they would not let my trial lawyer, Martie Gerber, develop the whole truth, and show how I didn't mislead the grand jury, and I'm worth believing as much as they are, maybe more, bad as I may look,

why am I not entitled to cross-examine? Shouldn't those two, Mr. Henderson and double agent Camp, have confronted the trial judge? I don't mean confront me; but you see what I mean."

THE KEY PROPOSITION RESTATED, FOR CLARITY, AS A SHEER PROPOSITION OF LAW, ON UNDISPUTED FACTS, WARRANTING CONSIDERATION TO CORRECT A "CONSTITUTIONAL ERROR OF FIRST MAGNITUDE".

The foregoing lumbering, awkward protests of Mitchell, Jr., are more formally offered next, as authoritatively settled and in the good spirit of advocacy, from solid ground.

I

The magnitude of the legal and factual prejudice effected by blocking development of cross-examination of the main prosecution witnesses, Camp and Henderson, however viewed, as a pure concept of constitutional law, or as practically eviscerating the whole theory of the defense, - offends settled minimum stan-

dards regarding fundamental basic requirements of a fair trial.

A. Viewed as a sheer question of law.

The attention of the Court is respectfully invited to the following schedule of cases in which this Court has authoritatively settled the chief contention of law made in this brief.

Alford v. United States, 282 U.S. 687, 75 L.Ed. 624, 51 S. Ct. 218, (1931), reversing jury conviction, language at 688-689, "It is the essence of a fair trial," etc. The Alford case remains the leading case.

Smith v. Illinois, 390 U.S. 129, 19 L. Ed.2d 956, 88 S.Ct. 748 (1968), reversing conviction, language at 132, "In Alford v. United States," etc., and at 133, "In this state case we follow the standard of Alford", etc. Dissent by Mr. Justice

Harlan only.

Garafolo v. United States, 390 U.S. 141, 19 L. Ed. 2d 970, 88 S. Ct. 841 (1968), granting certiorari, simultaneously vacating conviction, and remanding for further consideration. Mr Justice Harlan and Mr. Justice Black, dissenting without opinion, voting to deny certiorari.

Davis v. Alaska, 415 U.S. 308, 39 L. Ed. 2d 347, 94 S.Ct. 1105 (1974), reversing jury conviction, language at 315, "Since we granted certiorari limited to the question of whether petitioner was denied his right under the Confrontation Clause to adequately examine Green,...,the essential question turns on the correctness of the Alaska Court's evaluation of the scope of cross-examination permitted...."

Citing 5 Wigmore, Evidence #1395, p. 123 (3d Ed. 1940) at page 316 of opinion, and citing Alford v. United States at page 318, text, and in footnote 6 to page 318 with language in footnote here underscored for emphasis (but not so by Court), as follows: "... the constitutional dimension of our holding in Alford is not in doubt....". Davis also cites Brookhart v. Janis, 384 U.S. 1, 3; 16 L. Ed. 2d 314, 86 S.Ct. 1245, where the language, at page 3 of Brookhart reads, "Petitioner was thus denied the right of effective cross-examination which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it'". In Davis v. Alaska Mr. Justice White and Mr.

Justice Rehnquist dissented, stressing in the dissent that Davis was not a federal but a state case. The dissent may perhaps be read as relying upon traditional discretion, within limits, afforded trial judges, to delimit cross-examination.

Having marshalled the authorities the amicus curiae stops under this sub-heading, excepting to note that one of the witnesses whose cross-examination was blocked was the prosecutor turned witness, Mr. Henderson. And the other was double-agent Roger Camp, whose conviction in the case where the petitioner, Mitchell, Junior, tried, almost pathetically, to defend him, was on a charge of seling securities infinitely less "giltedge" than these case authorities.

Mr. Henderson's "overinvolvement" will be alluded to later.

B. Viewed From The Perspective Of The

Practical Havoc Which Eviscerated the Defense of Mitchell, Junior.

First example: The prosecution rests its case in chief. The defense moves for acquittal. The trial judge faces the exact trap which Rule 19(b) of this Court is designed to correct - He must rule, but he has not heard all the proper materials.

If he rules, he "has so far departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's power of supervision." Rule 19(b).

And a defense has to be put on which well might not have even been required.

The principle at the core of criminal law, requiring proof beyond a reasonable doubt, is abolished by such procedure.

Second example: And there are no other witnesses. The trial court will permit none to be subpoenaed to supply the fatal gaps?

Indeed the defense is prohibited from subpoenaeing either the grand jury reporter, foreman or any other mem-

bers, or from communicating with them.

The error is piled on.

All of this is pointed out in the Petition for Certiorari. It does not leap at you from those pages, however. The amicus curiae tries his hand at the requisite clarity (Rule 23[4]), and invites the attention of this Court to pages 16-18 of that document ending with the words, there capitalized, "refuses to consider what the grand jury had before it". [TR. 716?]

The prosecution simply substituted proof of what Mr. Henderson said had transpired before the grand jury in the place of details as to how the things which were supposed to have happened actually did happen.

But Mr. Henderson could not be cross-examined. The opinion of the Court of Appeals is devoted mostly to a tangent, mostly treating the problem as a pre-trial problem. The part that does not deal with pre-trial pins itself to terse reference at the last full paragraph:

> "The grand jury was appropriately concerned with Vito Nicasio's possible involvement in the transfer of stolen or fraudulent securities,...etc.. [omitting a reference to Mitchell, Jr. as being, supposedly, directly involved with Nicasio]".

But the grand jury is not shown anywhere to have filed, ever, as to Nito Nicasio - "No true bill found", or any return.

What if there had not been anything whatsoever to demonstrate that the grand jury had any longer any concern with Vito Nicasio's goings and comings at all?

The amicus curiae has now foreshadowed that Mr. Henderson may possibly, not have been above trumpery any more than Mr. Friedman, his colleague, who prosecuted Camp and Disston, and knew Camp was an informer, but allowed Disston to serve time rather than tell.

The Court of Appeals has decided, in the second Disston appeal, he is not above trumpery. It cannot be interpreted in any other way.

The prohibition of meaningful cross-examination cut across count lines,

and spoiled bolstering the credibility of the defendant.

His credibility should have been, but was not bolstered.

Moreover proof of lack of criminal intent is eviscerated. Yes, that's what I said, but certainly not what my words were intended to mean, in their context.

Here the argument winds down with the old but solid law of Hicks v. United States, 150 U.S. 442, 449.

In Hicks a murder conviction was reversed because an idiom spoken by one Indian to another capable of being interpreted in Indian circles as urging crime ("Take off your hat and die like a man") was not proved to have been so actually uttered by the Indian with that meaning.

It is not what some reasonable man intended.

It is what did the accused man intend?

Hicks is not a degression. Nor humor.

Even in review by grace the question is always:

"Was the judgment below fair and was it fairly arrived at?"

Finally, the ultimate judgment, as to punishment, without having dispelled doubt as to degree of guilt , if any guilt, must surely have been affected.

The judgment itself likely might have comported with the spirit of the classification of the crime, not as a felony at all but as a misdemeanor. Study Draft, #1352(1).

Under the Study Draft, published in 1970 (1), U.S. Government Printing Office, Washington, D.C., at page 122, the official comment to its #1352 (akinto 18 U.S.C. #1623), suggests at pages 123-124, that the substantive crime might be well redefined so as to include either a material or an immaterial falsity under oath in an official proceeding, i.e. before a grand jury, as a misdemeanor.

The trial judge might have found some lesser included offense if he had heard the whole case, not a part of it.

If he had found guilt at all.

II - "OVERINVOLVEMENT"

Lest the opening words of this argument, from page 20, not be altogether forgotten as the right reverence for law ineffably, eternally crowning men at law or permitted to enter its holy precincts:

> "Proper development of the issues in this case unhappily recounting how petitioner, Mitchell Edelson, Junior, flinched at a moment of truth really ought not require showing now how one, perhaps two of the federal prosecutors against Mitchell, Junior, became 'overinvolved'."

It would be sanctimonious to pray for dismissal unless, of course, greater skeletons are dug up.

All that is asked, in this part of the argument, is simply a retrial, through the mechanics of the writ of certiorari, very tightly limiting matters to be offered within close compass of the circles of thought outlined in these papers of the amicus curiae.

The amicus curiae must admit that his first reading of the petition for the Writ, filed November 10, 1978, instantly prompted the notion of the possibility that Rule 23(4) might be or have been

called into play.

And so this.

How can the lily be gilded?

How can the trenchant, open invitation of the Court through Mr. Justice Powell regarding "Government overinvolvement in areas outside the realm of contraband offenses" be better expressed than as there expressed, with its electric reference to United States v. Archer, 486 F. 2d 670, as quoted in Hampton v. United States, 425 U.S. 484, 493, per Mr. Justice Powell, regretting that the High Court had not "had occasion yet to confront the problem".

The facts sometimes argue themselves.

So it is hoped here.

Argument, as is often true, is best left unsaid or half-said.

One other caught up in the swirl of the web, namely Geoffrey Disston, has begun to achieve some relief. His second appeal, decided only weeks ago, has received good encouragement.

Disston's second appeal was rewarded, because of "Government overinvolvement" in the general area of this prose-

cution, with the writ of habeas corpus or the modern counterpart (18 USC §2255) of the Great Writ.

Is Mitchell, Junior, as worthy as Geoffrey Disston?

Is certiorari less great a writ?

Addendum; before concluding:

1. Reference to denial of certiorari, November 8, 1978, in Clavey, one of cases citied in Petition for Writ.
2. Reference to the statute cited in tables at page XV. This may bear upon Alford. Quaere: Golfarano answers, but before statute.

CONCLUSION

The writ of certiorari is prayed for, confined to either or both of the two Questions Presented, as to the Court may seem just, and full briefing.

Respectfully Submitted

CLARENCE EDELSON
ATTORNEY AND AMICUS CURIAE

CERTIFICATE OF SERVICE

Clarence Edelson, undersigned, certified as follows: 1) That he is a member of the Bar of the Supreme Court of the United States and 2) That he did send three copies of the Brief of Amicus Curiae Supporting Petitioner in the captioned matter, docketed as Case No. 78-779, Mitchell Edelson, Jr. Petitioner, vs. United States, respondent to each of the following attorneys for the respective parties by depositing same with postage prepaid, air mail, addressed as follows:

TO: Allan A. Ackerman, Esq.
100 No. La Salle St., Suite 611, Chicago, ILL. 60602

And TO: Hon. Solicitor General of United States
Route through
Jerome Feit, Esq., Department Chief, Appellate Section, Criminal Division
Department of Justice
10th and Constitution Ave.
Washington, D.C. 20530

All on December 16, 1978

at Calexico, California.

Clarence Edelson

CLARENCE EDELSON

Address:
P. O. Box 1105
835 Heffernan
Calexico, California 92231

Original lodged with Clerk

35-B